

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RYAN ROSS MCKENDRY-VERHUNCE,
Plaintiff,
v.
STEVE WOZNIAK, *et al.*,
Defendants.

Case No. 3:22-cv-00524-ART-CLB
ORDER

Pro se Plaintiff Ryan Ross McKendry-Verhunce brings this action under 42 U.S.C. § 1983. Before the Court are: (1) the Report and Recommendation (“R&R” or “Recommendation”) of United States Magistrate Judge Carla Baldwin (ECF No. 4), recommending that this action be dismissed without prejudice due to Plaintiff’s failure to file a completed *In Forma Pauperis* (“IFP”) application or pay the filing fee; and (2) Plaintiff’s motion for status update (ECF No. 6). Plaintiff timely filed an objection to the R&R. (ECF No. 5.) As explained below, the Court rejects the R&R in light of the documents newly submitted by Plaintiff with his objection and denies Plaintiff’s motion for status update as moot.

The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Here, Judge Baldwin recommends dismissal of this action without prejudice because Plaintiff did not attach to his complaint or submit in response to the Court’s November 28, 2022 order (ECF No. 3) a completed IFP application or filing fee. (ECF No. 4 at 2-3.) Following the submission of the R&R, Plaintiff timely filed an objection explaining that he “did fill out all three documents in the allot[ted] time frame” and Plaintiff attached a completed IFP application with his inmate account records. (ECF No. 5.) The IFP application is dated November 30, 2022, and the prison officer certification of the accuracy of Plaintiff’s records is dated December

1 9, 2022. (ECF No. 5 at 10-11.) It is unclear why these items were not properly
2 filed with the Court at an earlier time. Since Plaintiff has submitted the required
3 documents which are dated before the deadline set forth in the Court's November
4 28, 2022 order, and because Plaintiff is proceeding pro se, the Court will permit
5 Plaintiff's case to proceed to screening.

6 Plaintiff filed a motion for status update on July 7, 2023. (ECF No. 6.) In
7 Plaintiff's motion, Plaintiff states that he never received a response to his
8 objection to the R&R. The Court notes that Defendants did not file a response to
9 Plaintiff's objection.

10 It is therefore ordered that Judge Baldwin's Report and Recommendation
11 (ECF No. 4) is rejected in light of Plaintiff's submission of a completed IFP
12 application with Plaintiff's objection.

13 It is further ordered that the Clerk of Court file Plaintiff's IFP application
14 (ECF No. 5 Ex. B, C).

15 It is further ordered that Plaintiff's motion for status update (ECF No 6) is
16 denied as moot.

17
18
19 DATED THIS 1st day of August 2023.

20
21 

22
23 ANNE R. TRAUM
24 UNITED STATES DISTRICT JUDGE
25
26
27
28